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FOREWORD

This symposium on War Contract Renegotiation is one of a series of three dealing with problems arising out of the impact of the war upon war contracts and profits therefrom. The first, recently published, is on the subject of Excess Profits Taxation; following the present one there will shortly be published a symposium on the subject of War Contract Termination.

Little argument is needed to establish the contemporariness of this particular issue of LAW AND CONTEMPORARY PROBLEMS. As these words are being written (late December, 1943), there has come from the press and radio a flood of commentary upon the renegotiation provisions contained in the Revenue Bill of 1943, particularly in the form in which the Bill was approved by the Senate Finance Committee.

Although this symposium was planned long before the introduction of the pending Revenue Bill of 1943, it has been decided not to postpone publication until final clarification. Even if the Bill were to pass in the form which it now presents as the result of the Senate Finance Committee's recommendations (which is by no means assured), this symposium would not be invalidated. Interest would continue in the written record of the background of renegotiation, as set forth in the first three articles. These articles deal with profit limitation attempts in the past (Hensel and Lt. McClung), the development of renegotiation, especially as an adjunct to procurement (Marbury and Major Bowie), and the general picture of pricing in war contracts (Lloyd). Incidentally, Lloyd's article invites re-examination of statements frequently made that careful procurement, especially if coupled with an excess profits tax, makes renegotiation unnecessary.

More important, much of the standards, practices, machinery and procedures that are revealed in the pages that follow would continue relevant. So long as renegotiation remains at all, as it does even under the Senate Finance Committee proposals, this administrative experience will be utilized and presumably applied with only such changes as are necessitated by the congressional amendments. The articles on standards and practices (Blough), administrative machinery and procedures (Colonel Boyd), and the tie-up with income taxation (Colonel Watts), fall into this group.

The portion of this symposium that would be most affected by the pending legislation is the article on coverage and exemptions by W. John Kenney. In fact, if the pending legislation were adopted in its present form, attention would prob-

ably be focussed on the scope of the Act more than on any other single feature. A satisfactory survey in detail of all the ramifications of the changed emphasis could not be made until several months after the adoption of the Bill, which is another reason for not postponing publication of this symposium. Meanwhile, an over-all discussion of the effect of the pending legislation is to be found in the concluding article of this symposium by Jules Abels on the 1943 Revenue Bill renegotiation proposals. Most of the changes in the proposed legislation are discussed systematically in that article rather than being separately treated as specific points occur elsewhere in the symposium. That article should be kept in mind in reading the other articles.

Articles on constitutionality (Professor Collier), and surveying the *pros* and *cons* of renegotiation (H. L. Wilson), round out the discussion.

This symposium does not purport to be a manual of renegotiation procedure. Exigencies of space make it inadvisable to include, for example, the full text of the War Department's Procurement Regulation No. 12, relative to renegotiation and price adjustment, the Ordnance Procurement Instructions, Part 12, the Joint Statement by the War, Navy, and Treasury Departments, and the Maritime Commission, relative to purposes, principles, policies and interpretations under the Renegotiation Act, and the various forms of assignment notices, letters and reports. Many of these are available from the Technical Information Branch, War Department Price Adjustment Board; others from various published services. There is a possibility that by the time this reaches the reader the new Joint Renegotiation Manual for renegotiation may be available to the public.

Pardon is begged for introducing a perhaps unnecessary note of caution against false hopes. Renegotiation purports to turn back to the Government, whether by siphoning off some of the profits for a particular period or by changing price terms of contracts, the "excessive" profits which otherwise would have been made on the government business in question. What are "excessive profits" is, of course, the most crucial question in renegotiation. No short, easy answer to that question is to be found in the pages that follow.

E. R. LATTY.